

Law Clerk's Copy

copy

32

AFFIDAVIT OF ALLEN MORSLEY

STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD) ss.

1-01-CV-1003

J. Kane
FILED
HARRISBURG, PA

FEB 11 2002

MARY E. D'ANDREA, CLERK
Per *[Signature]*

I , ALLEN MORSLEY , BEING FIRST DULY SWORN ACCORDING TO
THE LAW , DEPOSE AND ATTEST AS FOLLOWS :

1. Prior To and During , My Trial and Direct Appeal, Defense Attorney Robert Cooper Failed to Advise me that the "Quantity" or "Type" of controlled Substance was An "Essential Element" Of the Substantive Aggravated Offense(s) For which I was Being Held to Answer , And for which I Received Punishment of Life Imprisonment.
2. Prior To,, And During, My Trial And Direct Appeal , Defense Attorney Robert Cooper Never even Tried to Defend Me Against The "Essential Elements" Of the Substantive Aggravated Offense Involving The "Type" or "Quantity" Of Controlled Substances; And , He gave me "Critically" Incorrect Legal Advice" (And, Total Lack of Defense) Concerning The "Quantity" And "Type" Of Controlled Substance(s) that were "Essential Elements" Of The Substantive Aggravated Offense(s) For which I was being Held to Answer , And for which I Received Punishment of Life Imprisonment.
3. During My Trial , Judge James C. Fox Essentially Instructed The Jury That it should Not Determine the "Quantity" O(r) "Type" Of Controlled Substance; He instructed the Jury It

Could Find Me **"Guilty"** If it Found that I Conspired with **"Cocaine"** (Making **No** Mention Of **Cocaine Base**).

4. That At **Arraignment** Judge **James C. Fox** Instructed Me That I Was Being Charged With Conspiracy To Distribute **Cocaine**. And then Asked Me How I Plead To These Charges , And I Said that I Was **Not Guilty**. (He Made **No** Mention Of **Cocaine Base**).
5. The **"Jury"** Returned A **General** Verdict , Only Finding Me **"Guilty"** Of Conspiracy Involving A **"Detectable "** Amount Of **"Cocaine"** . The Judge , At Sentencing , (Rather than Jury) Found Me Guilty Of Conspiracy Involving **(9) NINE OUNCES OF COCAINE BASE , And (5) OUNCES OF COCAINE** By Using An **Inaccurate "Preponderance"** of evidence Test , And He Imposed **Life** Imprisonment For Amount He **(Not Jury)** Determined.
6. Consequently , I **Never** Was Actually Provided A Trial By **"Jury"**, Using The **" Beyond " A Reasonable "Doubt" Standard**, on the **"Essential Elements"** Of The Quantity or **Type** of The Controlled Substance For which I was Held To Answer , And For which I Received Punishment of Life Imprisonment.
7. I am Being Imprisoned And Punished For **" Essential Elements"** Of Crimes **Without** Any **"Jury"** **Determination "Beyond A Reasonable Doubt"**, **And**, **Without "Notice"** In Indictment Prior To Trial .
8. Because of prevailing Circuit precedent ' At the time of My Trial And Direct Appeal, The Judge , Defense Attorney , And Myself **Never** Even Understood The Law(s) Concerning the Substantive Offense(s) For which I was Held to Answer ' And for which I

Received Punishment of Life Imprisonment Plus 5 Years.

9. After My Trial , And After My Direct Appeal , Then the Supreme Rendered it's opinions or Decisions in :

BAILEY Vs. UNITED STATES, 516 U.S. 137, 133 L Ed 2d 472, 116 S Ct 501.

BOUSLEY Vs. UNITED STATES, 523 U.S. 614, 140 L Ed 2d 828, 118 S Ct 1604.

APPENDI Vs. N.J., 530 U.S. 566 .

10. After Appendi Was Decided By Supreme Court , Then Almost every Circuit Court in The Nation Overruled its Own Prior Precedent, And the Circuits Re-interpreted 841(a)(b)(1)(A)(B) , So As To Reconstrue and Finally Reveal that "Quantity" And "Type" Of Controlled Substances Are Now "Essential Elements" Of the Sustantive Offense(s) under 841(a) That Must be Determined By the "Jury" (Not Judge) "Beyond A Reasonable Doubt" ; SEE, Cotton, 261 F.3d. 397 (4th. Cir)

Rodgers, 228 F.3d. 1318(11th. Cir.)

Gonzales, 259 F.3d. 355 (5th. Cir.).

11. After Appendi , The Ninth Circuit Declared 841(b)1 (A)(B) To Be Facially " unconstitutional," SEE Buckland, 259 F.3d. 1157 (9th Cir. 2001) Affirmed en banc, ____ F3d. ____.

12. As A Result of the Above "Facts" , I Believe it is Reasonable for me To Conclude , And Claim that Fundamental Defects Occurred During My Trial , Appeal, And in 2255 proceeding which Resulted in A Complete Miscarriage of Justice ' Because the Trial Judge , Defense Attorney , Court Of Appeals , And Defendant (me) Did Not Correctly

Understand The Law During those Critical Stages Of the Proceedings.
 I Raised Bailey During Trial , On Direct Appeal , Within 2255 Motions
 And Finally Within 2241 Motion ' Because Court Of Appeals Has Not
 Ruled On the Merits Of Bailey Claim , After Bailey Was Decided.
 And , I Am Being Imprisoned Under Statute that Interviening Constructio
 Has Made Act Not Criminal.

13. I Am "Actually" Innocent of The (9) Nine Ounces Of Cocaine Base
 (5) Five Ounces Of Cocaine. I Am "Actually" Innocent Of Using A
 Firearm During A Drug Trafficking Crime 924(C). I Am Not The
 Person Who Is Named In The Indictment. John Doe , Raleek , Or
BalHead.

14. I Believe And Assert that "AEDPA" Is Unconstitutional , AS it
 Suspends And Delays Habeas Corpus , And that "AEDPA" Violates
 the Separate " Retroactivity " Standard Established By Supreme
 Court in DAVIS -Vs- U.S., And U.S. -Vs- SHELTON, 848 F.2d 1485
 at 1489-1491 (10th Cir). [In Shelton, The Court of Appeals
 Recognized that Supreme Court In DAVIS Expressly Allowed Habeas
 Corpus RELief Based On INtervening Change In Circuit Precedent
 Construog "Elements" Of Offense , Not Based On Supreme Courts
 Interpretation Of Elements].

15. Further , In the Pre-Sentence INvestigation Report , it lists
 "Prior" Convictions (SEE P.S.I. PAGE #7).

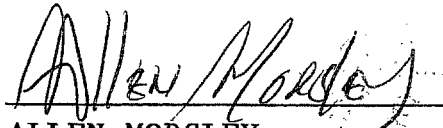
16. However , In those "prior" Convictions , when Ipleaded "Guilty",
 The Judge Failed To Advise Me That I Could Have "Assistance " Of

Of Counsel During A Trial ; He Did Advise Me I Could Have A Trial, But He Did Not Advise Me that I Was Entitled to "Assistance" Of Counsel During trial ; And, I Did Not Knowingly or Voluntarily Waive My Right To "Assistance" Of Counsel For Trial Because I Did Not Know Or Understand That I had A "Continuing" Right to Assistance of Counsel For Trial.

17. I Believe it is Unconstitutional to "Enhance" My Current Federal Sentence Based on those "prior" Uncounseled Convictions , As the Petitioner Was Only A Child. See [PLEA HEARING] . And that A New Supreme Court Decision Allows Me to Challenge "Uncounseled".Priors. SEE DANIELS 121 SCt. (2001); JACKSON -vs- MILLER , 260 F.3d 769 (7th Cir. 2001) VONN -Vs- U.S., 224 F.3d. 1152 , cert granted,121 SCt. 1185 (2001) COOK -Vs- LYNAUGH, 821 F.2d. 1072 (5th Cir. 1987) GIDEON -Vs- WAINWRIGHT, 372 U.S. 335, 83 SCt. 792 (1963).
18. My Defense Attorney In My Current Federal Case[Robert Cooper], Failed To Research the Facts and Law Concerning My "UNCounseled" Priors , And He Caused Procedural Defaults by Failing to "Object" To uncounseled "Priors" Listed IN PSI Report . I Was Prejudiced By His Deficient Performance Because the "Priors" Enhanced" My Criminal History Category Under the U.S. Sentencing Guidelines , And I Am "Suffering Anew" And Serving More Time In Prison Based In Part Upon "Prior" Violations Of My Right to "Assistance" Of Counsel.

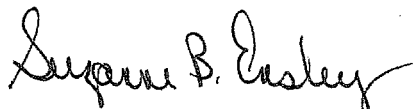
19. I Have Tried To Get Claudia Simms To Help Me Get Discovery To Prove That I And Raleek Are Two Different People , But Claudia Simms (Goverment Witness) Has Since Past Away ,(of Aids) As Well As Her Brother Claud Simms , How Goverment Alleged Had Indicated That Petitioner Was The One Who They Were Looking For ' When The petitioner Was Arrested . But Died Before The Petitioner Or The Goverment ~~Could~~ Call On Him To Support What The Goverment Had Alleged , Or Denie Such Allegations . For At Detention Hearing Agent Fannelly ATF. Testified That Claud Simms Had Passed Away See (Detention Hearing) " Claud Simms Had Passed Away By Aids Related Illness .
20. Since Claudia Simms Passed Away I Had All But Given Up On ever Being Able To Find The Person "Raleek" , But I Have Been Blessed ' Only to Be Cursed Once Again ! For the Person That Was Indicted IN Petitioners Place , One Raleek Has Passed Away Also ! By Aids Related Illness . Petitioner is still in The Process Of Gathering Information , Yet So Far I Have Been Able To Do Little But Assure that "Raleek" Died Between 1991 - 1992) or 1993 . Of Aids In New York City .

I , ALLEN MORSLEY , HAVE READ THIS AFF. , AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE , INFORMATION AND BLIEFS.


ALLEN MORSLEY

subscribed and Sworn to Me This Day 5th Of February, 2002

-6-


Suzanne B. Easley

My Commission Expires
September 17, 2003

CERTIFICATE OF SERVICE

I ALLEN MORSLEY , THE PETITIONER IN THIS CASE , HEREBY UNDER
THE PENALTY OF PERJURY , SERVE COPY OF SAID **AFFIDAVIT** UPON THE
FOLLOWING : **MATHEW E. HAGGERTY** U.S. Ass. ATTORNEY . BY
PLACING COPY IN POST PAID ENVELOPE ADRESSED AS FOLLOWS.

MATHEW E. HAGGERTY

Ass. UNITED STATES ATTORNEY , 228 Walnut Street.

Suite 220 P.O. Box 11754

HARRISBURG , Pa. 17108 - 1754 .

SERVED ON THIS DAY FEB. 5, 2002

OF THIS DO I NOW AFFIX MY HAND

MR Allen Morsley
MR. ALLEN MORSLEY . PETITIONER.

Witnessed by Robert Dugan
#23771-168 FEB 5, 2002.